Supreme Court, U.S.
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Docket No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1998

STATE LINE HOTEL, INC.,
Petitioners

v.

CHRIS BUDDENSICK
Respondent.

On Petition for a Writ of Certiorari to the Utah Court of Appeals

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

May a state constitutionally exercise general jurisdiction over a non-resident defendant for causes of actions arising outside the forum state when that Defendant has contact with the forum State less than that found appropriate in *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 96 L. Ed. 485, 72 S.Ct. 413 (1952), for an exercise of general jurisdiction, and if so, what level of conduct is necessary?

LIST OF PARTIES TO THE PROCEEDING

The State Line Hotel, Inc., has no parent company. The State Line Hotel, Inc., has no non-wholly owned subsidiaries.

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CITATIONS TO THE OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS

The opinion of the Utah Court of Appeals is officially reported at *Buddensick v. Stateline Hotel, Inc.*, 972 P.2d 928 (Utah Ct. App. 1998). The opinion is unofficially reported at *Buddensick v. Stateline Hotel, Inc.*, 359 Utah Adv. Rep. 10 (CA, December 24, 1998).

STATEMENT OF JURISDICTION

1. Date Judgment Entered: December 24, 1998.[1]

2. Date of Order Regarding Rehearing: None.

3. Rule 12.5 Cross-petition for Certiorari: None.

4. Statutory Provision Conferring Jurisdiction: 28 U.S.C.A. § 1257 (1998).

5. Notifications Required Under Rule 29.4(b) and (c): None.

CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

Section 1 of the Fourteenth Amendment to the United States Constitution provides as follows:

> **Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of

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[1] The Utah Supreme Court denied discretionary review of this case on April 13, 1999. Pursuant to Rule 13.1 of the Supreme Court Rules, this petition is timely as it is filed within 90 days of the order denying discretionary review.

> the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.

STATEMENT OF THE CASE

A. STAGE OF PROCEDURE WHEN FEDERAL QUESTION RAISED.

Ms. Buddensick filed suit against the State Line Hotel, Inc., on January 17, 1997, in the Third Judicial District Court in and for Salt Lake County, State of Utah. The State Line Hotel, Inc., filed a motion to dismiss pursuant to Rule 12(b)(2) of the Utah Rules of Civil Procedure on the grounds that the court could not exercise personal jurisdiction over the State Line Hotel, Inc.

The question presented for review was raised in the memorandum filed in support of the motion to dismiss. Although the entire motion dealt with the jurisdictional issues and the constitutional foundation for an exercise of jurisdiction by the State of Utah, the supporting memorandum expressly discussed the constitutional issues:

> Finally, there is a constitutional "due process" element to personal jurisdiction. In *Arguello*, the Utah Supreme Court stated:

> To exercise jurisdiction consistent with due process, the non-resident defendant must have "minimum contacts with the forum state such that the maintenance of this suit does not offend 'traditional notions of fair play and substantial justice.'"
>
> *Id.* at 1123, quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

(R. 14). The trial court granted the State Line Hotel, Inc.'s, motion to dismiss for lack of personal jurisdiction, and Ms. Buddensick appealed. The Utah Court of Appeals reversed on December 24, 1998, holding as a matter of law that Utah could exercise general jurisdiction over the State Line Hotel, Inc. The Utah Supreme Court denied discretionary review on April 13, 1999.

B. STATEMENT OF FACTS

1. The State Line Hotel, Inc. is a Nevada corporation which owns and operates the State Line Hotel in Wendover, Nevada. (Record at 11-12, 248, *Buddensick v. Stateline Hotel, Inc.*, 972 P.2d at 928, 929 (Utah Ct. App. 1998)). (Wendover, Nevada, is located on the Utah-Nevada border and is the closest Nevada town to the Salt Lake City-Ogden-Provo metropolitan area. Consequently, Wendover, Nevada, is a frequent destination for those who wish to legally gamble.)

2. On July 29, 1995, Ms. Buddensick slipped and fell on the premises of the State Line Hotel and Casino while

going through a food buffet line. (Record at 1-4, 248, *Buddensick*, 972 P.2d at 929.)

3. State Line Hotel advertises its Nevada hotel and casino in Utah. (Record at 12, 248, *Buddensick*, 972 P.2d at 929).

4. State Line Hotel contracts for goods and services from entities in several states including Utah and Nevada. (Record at 12, 249, *Buddensick*, 972 P.2d at 929).

5. At the time of Ms. Buddensick's fall, State Line Hotel contracted with State Line Properties, Ltd., a Utah limited partnership, which took reservations from Utah residents for hotel rooms, golf packages, gaming tournaments, shows, and entertainment. The general partner of State Line Properties, Ltd., was State Line Properties, Inc., a Utah corporation. (Record at 12, *Buddensick*, 972 P.2d at 929).

6. State Line Hotel, Inc., the Nevada corporate defendant, owns stock in the Utah corporation, State Line Properties, Inc. State Line Properties, Inc. and State Line Properties, Ltd., along with several other entities, are named insureds under the same insurance policy as State Line Hotel, Inc. (Record at 249, *Buddensick*, 972 P.2d at 929).

7. State Line Properties, Inc. and State Line Properties, Ltd. own five parcels of real property in West Wendover, Utah, which they lease to State Line Hotel, Inc. Two of the parcels are used for parking lot, parking structure, and signage purposes relating to Petitioner's hotel and casino business. The city of West Wendover, Utah, leases a storage unit at

Decker Field, the city's airport, to State Line Hotel, Inc. (Record at 249, *Buddensick*, 972 P.2d at 929).

ARGUMENT

I.

THE UTAH COURT OF APPEALS' DECISION CONFLICTS WITH DECISIONS OF THIS COURT.

The issue presented to the Utah Court of Appeals was whether the forum state activities of the Petitioner State Line Hotel, Inc., were sufficient to permit Utah courts to exercise jurisdiction over matters unrelated to those forum-state activities. The Utah Court of Appeals held that Utah could, as a matter of law, exercise such jurisdiction over this matter, which arose from conduct occurring entirely in Nevada.[2] State Line Hotel, Inc., submits that this conclusion is inconsistent with United States Supreme Court authority governing a state's right to exercise general jurisdiction under the Due

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[2]As explained in more detail below, general personal jurisdiction permits a court to exercise power over a defendant without regard to the subject of the claim asserted. In contrast, specific personal jurisdiction gives a court power over a defendant only with respect to claims arising out of the particular activities of the defendant in the forum state. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-73, 85 L. Ed. 2d 528, 105 S. Ct. 2174 (1985).

Process Clause of the Fourteenth Amendment to the United States Constitution.

As with specific jurisdiction, a state's power to exercise "general" jurisdiction is limited by the Due Process Clause. In *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 80 L. Ed. 2d 404, 104 S. Ct. 1868 (1983), a general jurisdiction case, this Court confirmed that "[t]he Due Process Clause of the Fourteenth Amendment operates to limit the power of the State to assert in personam jurisdiction over a nonresident defendant." 466 U.S. at 413-14. In this case, the Utah Court of Appeals failed to consider the Due Process implications of its decision, and as a result, Petitioner State Line Hotel, Inc., respectfully contends that the Utah Court of Appeals' decision is in conflict with controlling United States Supreme Court authority. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 80 L. Ed. 2d 404, 104 S. Ct. 1868 (1983); *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 96 L. Ed. 485, 72 S. Ct. 413 (1952).

In *Perkins*, a shareholder sued the Benguet Mining Company in Ohio, even though the corporation was organized under the laws of the Philippine Islands. The United States Supreme Court framed the issue as "whether, as a matter of federal due process, the business done in Ohio by the respondent mining company was sufficiently substantial and of such a nature as to *permit* Ohio to entertain a cause of action against a foreign corporation, where the cause of action arose from activities entirely distinct from its activities in Ohio."

Perkins, 342 U.S. at 447. The Court then summarized Benguet's activities in Ohio as follows:

> The company's mining properties were in the Philippine Islands. Its operations there were completely halted during the occupation of the Islands by the Japanese. During that interim the president, who was also the general manager and principal stockholder of the company, returned to his home in Clermont County, Ohio. There he maintained an office in which he conducted his personal affairs and did many things on behalf of the company. He kept there office files of the company. He carried on there correspondence relating to the business of the company and to its employees. He drew and distributed there salary checks on behalf of the company, both in his own favor as president and in favor of two company secretaries who worked there with him. He used and maintained in Clermont County, Ohio, two active bank accounts carrying substantial balances of company funds. A bank in Hamilton County, Ohio, acted as transfer agent for the stock of the company. Several directors' meetings were held at his office or home in Clermont County. From that office he supervised policies dealing with the rehabilitation of the corporation's properties in

> the Philippines and he dispatched funds to cover purchases of machinery for such rehabilitation. Thus he carried on in Ohio a continuous and systematic supervision of the necessarily limited wartime activities of the company.

Id. at 447-48. Under these circumstances, the Court permitted Ohio to exercise jurisdiction over the Benguet Mining Company for matters unrelated to the forum state activity.

On the other end of the spectrum is *Helicopteros*, 466 U.S. 408, 80 L. Ed. 2d 404, 104 S. Ct. 1868 (1983). There, the plaintiffs were residents of Texas and heirs of persons killed in a helicopter crash in Peru. They sought to assert jurisdiction over the helicopter operator, a Colombian corporation, in Texas.

This Court stated that "[w]e thus must explore the nature of Helicol's contacts with the State of Texas to determine whether they constitute the kind of continuous and systematic general business contacts that the Court found to exist in Perkins." *Helicopteros*, 466 U.S. at 415-16. The Court summarized Helicol's activities in Texas as follows:

> It is undisputed that Helicol does not have a place of business in Texas and never has been licensed to do business in the State. Basically, Helicol's contacts with Texas consisted of sending its chief executive officer to Houston for a contract-negotiation session; accepting into its New York bank account checks drawn

> on a Houston bank, purchasing helicopters, equipment, and training services from Bell Helicopter for substantial sums; and sending personnel to Bell's facilities in Fort Worth for training.

Id. at 416. On this record, this Court concluded that "Helicol's contacts with the State of Texas were insufficient to satisfy the requirements of the Due Process Clause of the Fourteenth Amendment." *Id.* at 419.

In this case, the State Line Hotel, Inc.'s contacts likewise do not rise to the level found in *Perkins* necessary for Utah to exercise general personal jurisdiction over the State Line Hotel, Inc., nor does the State Line Hotel, Inc.'s activity even rise to the level considered insufficient in *Helicopteros*. The State Line Hotel, Inc.'s contacts with Utah may be placed in three categories: (1) advertising activities, including telephone numbers; (2) purchasing goods and services from Utah vendors; and (3) leasing five small pieces of property in Utah. This conduct does not come close to the type of pervasive activity found in *Perkins* which justified an exercise of jurisdiction over actions completely unrelated to the non-resident's forum state activities. Thus, Petitioner State Line Hotel, Inc., respectfully contends that the Utah Court of Appeals' decision is inconsistent with controlling authority from this Court. Therefore, the State Line Hotel, Inc., respectfully requests that this Court issue a writ of certiorari to review the matter.

II.

THE UTAH COURT OF APPEALS HAS DECIDED AN IMPORTANT FEDERAL QUESTION WHICH HAS NOT BEEN, BUT SHOULD BE, DECIDED BY THIS COURT.

This Court has differentiated between "specific" and "general" jurisdiction on whether the dispute arises out of the forum state activities of the defendant:

> It has been said that when a State exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum, the State is exercising "specific jurisdiction" over the defendant. See Von Mehren & Trautman, Jurisdiction to Adjudicate: A Suggested Analysis, 79 HARV. L. REV. 1121, 1144-1164 (1966).
>
> * * *
>
> When a State exercises personal jurisdiction over a defendant in a suit not arising out of or related to the defendant's contacts with the forum, the State has been said to be exercising "general jurisdiction" over the defendant. See Brilmayer, How Contacts Count: Due Process Limitations on State Court Jurisdiction, 1980 S.Ct.Rev. 77, 80-81; Von Mehren & Trautman,

79 HARV. L. REV., at 1136-1144; *Calder v. Jones*, 465 U.S., at 786.

Helicopteros, 466 U.S. at 415, n.8, n.9. This case involves an exercise of general jurisdiction by the State of Utah over the State Line Hotel, Inc., a Nevada corporation, because the Plaintiff's alleged injuries did not arise out of any of State Line Hotel, Inc.'s, activities within the State of Utah.

Before turning to the conflict between the lower courts on the issue of general jurisdiction, it should be noted that an exercise of general jurisdiction involves concepts which do not typically arise in the specific jurisdiction analysis. Whereas specific jurisdiction often focuses on "traditional notions of fair play and justice" and the convenience to a defendant, the general jurisdiction analysis is premised not only on fairness to the defendant, but also on the relationship between the states and the power of one state to exercise jurisdiction over a non-resident regarding claims which did not arise in, and do not involve, the forum state. This Court has stated:

> Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its laws to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 294-95, 62 L. Ed. 2d 490, 100 S. Ct. 559 (1979). The Court has also stated:

> Nevertheless, we have never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we, and remain faithful to the principles of interstate federalism embodied in the Constitution. The economic interdependence of the States was foreseen and desired by the Framers. In the Commerce Clause, they provided that the Nation was to be a common market, a "free trade unit" in which the States are debarred from acting as separate economic entities. H.P. Hood & Sons, Inc. v. Du Mond, 336 US 525, 538, 93 L Ed 865, 69 S Ct 657 (1949). But the Framers also intended that the States retain many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts. The sovereignty of each State, in turn, implied a limitation on the sovereignty of all of its sister States--a limitation express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment.
>
> Hence, even while abandoning the shibboleth that "[t]he authority of every tribunal is necessarily restricted by the territorial limits

> of the State in which it is established," Pennoyer v. Neff, supra, at 720, 24 L Ed 565, we emphasized that the reasonableness of asserting jurisdiction must be assessed "in the context of our federal system of government," International Shoe Co. v. Washington, supra., at 317, 90 L Ed 95, 66 S Ct 154, 161 ALR 1057, and stressed that the Due Process Clause ensures not only fairness, but also the "orderly administration of the laws."

Id.

These considerations become far more critical when a state seeks to exercise jurisdiction over non-residents for conduct and matters occurring entirely outside its boundaries. When a state exercises specific jurisdiction over a non-resident for activities relating to the forum, the state does no more than call the non-resident to account for activities *conducted within the forum state.* However, general jurisdiction is an exercise of power over a non-resident and regarding activities and conduct that occurred outside the State of Utah, and which the state has a minimal interest in controlling. Thus, the exercise of general jurisdiction is a far greater assertion of power within the system of interstate federalism, and consequently, requires a higher level of conduct before Due Process concerns are satisfied. When, as here, the plaintiff is a resident of the forum state, it is easy to forget that a finding of general jurisdiction is an assertion that a state may, consistent with the

Due Process Clause, exercise jurisdiction over matters entirely unrelated to the forum state activities.

However, while this Court has addressed the parameters of specific jurisdiction on numerous occasions since the landmark decision in *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L. Ed. 95 (1945), the Court has only addressed general jurisdiction in two cases in the last 47 years. *Helicopteros*, 466 U.S. 408; *Perkins*, 342 U.S. 437. While in both these cases the Court held that continuous and systematic activity was necessary before a State could exercise general jurisdiction over a non-resident defendant, in neither case did the Court provide guidelines as to the types of activities which would meet this constitutional requirement.

Rather, in *Perkins*, this Court listed the corporate activities of the defendant within the State of Ohio and then concluded that the defendant "carried on in Ohio a continuous and systematic supervision of the necessarily limited wartime activities of the company." *Perkins*, 342 U.S. at 448. In *Helicopteros*, this Court simply identified the contacts of the defendant with the State of Texas and concluded they "were insufficient to satisfy the requirements of the Due Process Clause of the Fourteenth Amendment." *Helicopteros*, 466 U.S. at 419.

Based on this authority, the lower courts can readily dismiss cases where the defendant's alleged contacts with the forum are below that found lacking in *Helicopteros*, and will feel comfortable exercising general jurisdiction where the

contacts exceed those found in *Perkins*. However, it remains unclear whether the activity of a defendant must be similar to that of *Perkins* for general jurisdiction to exist, or whether a court may constitutionally exercise general jurisdiction at some point between *Perkins* and *Helicopteros*.

As a result of this uncertainty, courts have reached confusing and conflicting results while purportedly claiming to apply the continuous and systematic activity standard set forth by this Court in *Helicopteros*. Perhaps the conflict and confusion regarding the scope of general jurisdiction is best illustrated by comparing the present matter with *Williams v. Lakeview Co.*, 1999 WL 440398 (Ariz. Ct. App. 1999), which was decided by the Arizona Court of Appeals on July 1, 1999. *Williams* also involved a hotel/casino located near the Nevada border with Arizona. As in the case at hand, the casino advertised heavily in Arizona, solicited tour buses, and employed residents of Arizona. However, the Arizona Court of Appeals held that such contacts were inadequate for an exercise of general jurisdiction:

> We accept as true plaintiffs' assertion that Lakeview regularly advertised in a local Arizona newspaper, the Cerbat Gem, soliciting Arizona residents to visit its Nevada casino, that a substantial number of Lakeview's customers were Arizona residents, that Lakeview employed seventeen Arizona residents at its casino in Nevada, and that Lakeview actively solicited Arizona tour bus

> companies to bring passengers to its Casino. We conclude, however, that these activities *are not sufficiently "substantial" or "continuous"* to confer general jurisdiction over Lakeview.

Id. at 2. (Emphasis added.) The fact that two state courts examining similar conduct reached diametrically opposite results is further evidence of the confusion present in the lower courts and the need for this Court to establish more workable and concrete standards.

Several legal scholars examining the treatment of general jurisdiction nationwide have emphasized the inconsistent results and the need for guidance from this Court. For example, Professor Glenn George surveyed cases addressing general jurisdiction prior to 1990 and concluded:

> The Court's failure to deal more concretely with the general jurisdiction problem has led to confusion in lower court decisions. The lower courts' conclusions as to what constitutes "substantial" or "continuous and systematic" activities vary widely. Indeed, it is remarkable how far some courts have extended their jurisdiction over foreign corporations to litigate claims arising in another forum.

Glenn George, *In Search of General Jurisdiction*, 64 TULANE L. REV. 1097, 1110-11 (1990).

Professor Mary Twitchell has also outlined the confusion which surrounds general jurisdiction law:

Used correctly, the general/specific dichotomy has helped courts focus on their reasons for exercising jurisdiction in particular cases. However, courts have developed a variety of approaches to the conceptual framework that are not always consistent with the original meaning of the terms. Two factors account for this variety: first, courts are not sure of the meaning of general and specific jurisdiction; second, and more fundamentally, they are not sure how to use the general/specific framework when deciding whether it is fair to exercise jurisdiction over a defendant that has some continuous and systematic ties with the forum when the dispute is only tenuously connected with those ties. Uncertain about the scope of specific jurisdiction, many courts have turned to general jurisdiction to analyze these claims. In so doing, they have developed a form of general jurisdiction – "conditional" general jurisdiction – that ignores the dispute-blind character of general jurisdiction as it was originally conceived. The result is an impoverished body of general jurisdiction case law that fails to explore the question of the state's general adjudicatory power over nonresident defendants, and an impoverished body of specific jurisdiction case law that fails

> to recognize that courts often exercise what is, in fact, specific jurisdiction over claims only tenuously tied to a defendant's forum contacts.

Mary Twitchell, *The Myth of General Jurisdiction*, 101 HARV. L. REV. 610 (1988). Ms. Twitchell asserts that while the courts all claim to be applying the "continuous and systematic" test, there is little analysis leading to that result:

> Consistent with the Supreme Court's approach, the lower courts often repeat the requirement of "continuous and systematic" contacts, list the corporate activities in the forum, and announce the presence or absence of general jurisdiction with minimal analytical discussion. Although these courts purportedly are applying the same constitutional standard, the results are confusing and frequently unexplained. The question remains, how much contact is enough?

Id. at 1114. The Utah Court of Appeals' decision in this case follows this pattern. The Court simply recited the contacts of the State Line Hotel, Inc., in Utah and stated the conclusion that such contacts were sufficient to exercise general jurisdiction, and failed to analyze the Due Process implications of its decision. See *Buddensick*, 972 P.2d 928 (Utah Ct. App. 1998)

The myriad courts in the United States have repeatedly expressed their confusion, both directly and indirectly (through their lack of sound reasoning for asserting jurisdiction). The Third Circuit Court of Appeals has stated,

"no precise test has been devised for ascertaining the limits of in personam jurisdiction." *Bernardi Bros., Inc. v. Pride Mfg., Inc.*, 427 F.2d 297, 299 (3d Cir. 1970). The United States District Court for the Western District of Louisiana agreed with *Bernardi* when it stated, "[t]he U.S. Supreme Court has provided little specific guidance as to the precise limits on the exercise of general personal jurisdiction." *Follette v. Clairol, Inc.*, 829 F. Supp. 840, 844 (W.D. La. 1993) (holding that, although defendants' contacts with Texas were "substantial and continuous," state could not assert jurisdiction because to do so would be unfair and unreasonable).

Because of this lack of "specific guidance," state and federal courts have struggled with the issue of general jurisdiction and have created conflicting approaches to address it. Some courts look at the interest of the state in overseeing the litigation, *Simmons v. Seatide International, Inc.*, 693 F. Supp 510 (E.D. La. 1988); others look to the nature and quantity of the defendant's contacts with the forum state. *Donley v. Whirlpool Corp.*, 234 F. Supp. 869 (E.D. Mich. 1964). Still other jurisdictions view the percentage of defendant's contacts with the forum as compared with the totality of their business activities, *Independent School District No. 454, Fairmont Minnesota v. Marshall and Stevens Co.*, 337 F. Supp. 1278 (D. Minn. 1971), while other courts have used language such as "predominantly headquartered" and "near domicile relation" when assessing the viability of general jurisdiction. *Haas v. A.M. King Industries, Inc.*, 28 F. Supp. 2d 644 (D. Utah 1998).

The apparent confusion shown through these and literally hundreds of other cases, should be lifted by setting a more definite approach with which to determine general jurisdiction. A corporation that has minimal contact with multiple states should be able to assume that treatment will be generally equal between states. The State Line Hotel, Inc. understands this Court's reluctance to make a bright-line test for general jurisdiction, but there should be more definite guidelines so as to fulfill the protections guaranteed by the Due Process Clause. After all, this Court has noted that one of the primary aims of the Due Process Clause is to provide a degree of predictability to an exercise of jurisdiction:

> By requiring that individuals have "fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign," Schaefer v. Heitner, 433 U.S. 186, 218, 53 L. Ed. 2d 683, 97 S. Ct. 2569 (1977)(Stevens, J., concurring in judgment), the Due Process Clause "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 62 L. Ed. 2d 490, 100 S. Ct. 559 (1980).

Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472, 85 L. Ed. 2d 528, 105 S. Ct. 2174 (1985). Under the current state of this

Court's general jurisdiction analysis, a non-resident has no "minimum assurance" of when its conduct will subject it to the general jurisdiction of another state. On the contrary, even minimal contact may be considered sufficient to subject a defendant to the general jurisdiction of another forum, particularly in those instances, such as here, where the state has an incentive to provide its own residents with a convenient forum to litigate claims, even to the detriment of non-residents. While the Due Process Clause is designed to prevent such an arbitrary exercise of power by the states, the lack of guidance from this Court has permitted state courts to exercise their powers almost without limit.

CONCLUSION

Based on the foregoing, Defendant State Line Hotel, Inc., respectfully requests a writ of certiorari to the Utah Court of Appeals.

DATED this 9 of July, 1999.

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APPENDIX

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IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

CHRIS BUDDENSICK,	:	FINDINGS OF FACT,
	:	CONCLUSIONS OF LAW
Plaintiff,	:	AND ORDER
	:	
vs.	:	
	:	
STATELINE CASINO,	:	
INC., dba	:	Civil No. 9709003891PI
STATELINE HOTEL AND	:	
CASINO,	:	
and DOES I-X,	:	
	:	
Defendant.	:	Judge William A. Thorne

Defendant's Motion to Dismiss Plaintiff's Complaint Based on Lack of Personal Jurisdiction was initially argued

before the Court on June 30, 1997. Cynthia K.C. Meyer of Morgan & Hansen appeared for the Defendant, State Line Hotel, Inc., and Michael A. Katz of Siegfried & Jensen appeared for the Plaintiff, Chris Buddensick. After argument, the Court set the matter for an evidentiary hearing and allowed Plaintiff to engage in discovery. The Court's ruling in that regard was made on the record on June 30, 1997.

The matter was again heard on September 15, 1997, the date set for evidentiary hearing. Ms. Meyer again appeared for the Defendant and Mr. Katz again appeared for Plaintiff. Plaintiff did not present evidence, but had engaged in discovery during the interim between the two hearings.

The Court, having read and considered the memoranda and affidavits submitted by the parties, including the supplemental memoranda containing discovery responses submitted by the parties prior to the September 15, 1997, hearing, having heard and considered the arguments of counsel, being familiar with and having reviewed the file, being fully advised in the premises, and good cause otherwise appearing, now makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Defendant, the State Line Hotel, Inc., is a Nevada corporation which owns and operates the State Line Hotel and Casino in Wendover, Nevada.

2. On July 29, 1995, Plaintiff slipped and fell on the premises of the State Line Hotel and Casino while going through a food buffet line.

3. Defendant advertises its Nevada hotel and casino in Utah.

4. Defendant contracts for goods and services from entities in several states including Utah and Nevada.

5. Defendant owns stock in a Utah corporation, State Line Properties, Inc., which is the general partner of a Utah limited partnership, State Line Properties, Ltd. State Line Properties, Inc., and State Line Properties, Ltd., along with several other entities, are named insureds under the same insurance policy as Defendant.

6. State Line Properties, Inc. and State Line Properties, Ltd. own five parcels of real property in Wendover, Utah, which they lease to Defendant. Two of the parcels are used for parking lot, parking structure, and signage purposes relating to Defendant's hotel and casino business. The city of Wendover leases a storage unit at Decker Field to Defendant.

7. Defendant's leasing of incidental parcels including signage and parking areas while directly related to the carrying-on of its business in Nevada is not an integral part of the business in the sense that the hotel and casino could not continue without it.

8. Defendant does not own any real property in Utah.

CONCLUSIONS OF LAW

1. Plaintiff's slip and fall and her subsequent cause of action against Defendant did not arise out of Defendant's contacts with the state of Utah; therefore, Utah's

Long-Arm Statute, Utah Code Ann. § 78-27-24 does not apply.

2. Defendant does not do business in Utah by virtue of its ownership of stock in State Line Properties, Inc., a Utah Corporation, which does business in Utah. In addition, Defendant does not do business in Utah by virtue of the commonality of stock holders and partners among Defendant, State Line Properties, Inc. and State Line Properties, Ltd.

3. The fact that Defendant, State Line Properties, Inc., and State Line Properties, Ltd., are insured under the same insurance policy is irrelevant.

4. Defendant's advertising and promotional activities in Utah are insufficient to confer general personal jurisdiction over Defendant in Utah courts.

5. The Defendant's leasing of the parcels of real property in Wendover, Utah, is insufficient to confer general personal jurisdiction over Defendant in Utah courts.

6. Overall, Defendant's contacts with Utah are limited in nature (although some are continuous) and are not tantamount to doing business in Utah, such that the exercise of general personal jurisdiction over Defendant would be appropriate.

Having made and entered the foregoing Findings of Fact and Conclusions of Law, the Court hereby

ORDERS that Plaintiff's Complaint be and the same is hereby dismissed with prejudice on the grounds that this Court does not have personal jurisdiction over Defendant, either general or specific.

DATED this 8th day of October, 1997.

BY THE COURT:

s/William A. Thorn

William A. Thorne
District Judge

APPROVED AS TO FORM:

s/Michael A. Katz
Michael A. Katz
SIEGFRIED & JENSEN
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30 day of September, 1997, pursuant to Rule 4-504 of the Utah Code of Jud. Admin., I caused a true and correct copy of the foregoing proposed FINDINGS OF FACT. CONCLUSIONS OF LAW AND ORDER to be served on the following for approval as to form via first class mail. postage pre-paid:

Michael A. Katz
SIEGFRIED & JENSEN
5684 South Green Street
Murray, UT 84123

s/Melanie Morgan

FILED DECEMBER 24. 1998 (COURT OF APPEALS)

IN THE UTAH COURT OF APPEALS

----ooOoo----

Chris Buddensick,	)	OPINION
	)	(For Official Publication)
Plaintiff and	)	
Appellant,	)	
v.	)	Case No. 981052-CA
	)	
Stateline Hotel, Inc., dba	)	FILED
Stateline Hotel and Casino;	)	(Dec. 24, 1998)
and Does I-X,	)	
	)	
Defendants and		
Appellees.		

Third District, Salt Lake Department
The Honorable William A. Thorne

Attorneys: Michael A. Katz and Deven J. Coggins. Murray, for Appellant
Joseph E. Minnock. Stephen G. Morgan. Cynthia K.C. Meyer. Salt Lake City, for Appellees.

Before Judges Bench, Billings, and Orme.

BILLINGS, Judge:

Chris Buddensick (Buddensick) appeals from an order dismissing her complaint against Stateline Hotel, Inc. (Stateline), a Nevada corporation, for lack of personal jurisdiction. Based on the undisputed facts before the trial court, we conclude that Utah has general personal jurisdiction over Stateline and thus reverse and remand.

BACKGROUND

Buddensick was injured when she slipped and fell while standing in line at Stateline's casino buffet restaurant located in Wendover, Nevada. She subsequently filed a complaint in the Third Judicial District Court of Salt Lake County. Stateline filed a Motion to Dismiss the Complaint based on lack of personal jurisdiction. The trial judge granted Buddensick's request that a hearing on the motion to dismiss take place after discovery had been completed on the issue of Stateline's contacts with Utah.

Discovery revealed that Stateline: advertises its hotel and casino in Utah; contracts for goods and services in Utah; uses a Utah insurance agent and a Utah law firm; leases from Stateline Properties at least five parcels of property in Utah, two of which are used for a parking lot, parking structure, and signage purposes directly adjacent to Stateline's hotel and casino business in Nevada; maintains at least two post office boxes in Utah, one of which Stateline shares with Stateline Properties; and has a Utah cellular telephone number, regular telephone number, and six Utah fax numbers.

On September 15, 1997, a hearing was held on Stateline's Motion to Dismiss. After the hearing, the trial judge entered an order dismissing Buddensick's complaint for lack of general or specific personal jurisdiction. Buddensick now appeals.

ANALYSIS

"Where, [as here,] a pre-trial jurisdictional decision has been made on documentary evidence only," and that decision did not involve the trial court's resolution of conflicting facts, "an appeal from that decision presents only legal questions that are reviewed for correctness." Arguello v. Indus. Woodworking Mach. Co., 838 P.2d 1120, 1121 (Utah 1992); see Anderson v. American Soc'y of Plastic and Reconstructive Surgeons, 807 P.2d 825, 827 (Utah 1990).

General Personal Jurisdiction

Buddensick contends the trial court erred in dismissing her complaint because she established that the court had both general and specific personal jurisdiction over Stateline. We agree that the court erred in determining it did not have general jurisdiction over Stateline, and thus do not reach her alternative argument.

As early as 1953, the Utah Supreme Court addressed the conditions under which a foreign corporation was "doing business" in Utah so as to be amenable to suit for any purpose in Utah's courts. In McGriff v. Charles Antell, Inc., 123 Utah 166, 169-70, 256 P.2d 703, 704-05 (1953), our supreme court held that advertising in Utah, plus "something else," could constitute a presence in Utah sufficient to confer general personal jurisdiction over a foreign defendant.

> In determining whether a foreign corporation is doing business in a

> state for jurisdictional purposes, each case factually must be examined as it arises. A hard and fast formula cannot determine algebraically every case. Common sense must dictate the result.... The test goes to the "something else." Somewhere a line is to be drawn and the courts judiciously must mark it. To date the pattern, which in a changing world is ever changing, excludes solicitation alone as justifying jurisdiction conferred. Beyond such solicitation the activity to confer jurisdiction must be of sufficient substance and of such scope and variety as would lead a court of last resort to conclude that immunization of the foreign corporation against the power of our forum would be unrealistic, unreasonable and a vehicle for oppressing or meting out injustice to our local citizens.

Id. at 204-05.(footnote omitted).

More recently, in Arguello, 838 P.2d at 1122, the supreme court noted, "[g]eneral personal jurisdiction permits a court to exercise power over a defendant without regard to the subject of the claim asserted. For such jurisdiction to exist, the defendant

must be conducting substantial and continuous local activity in the forum state."

A survey of a wide range of case law reveals that when other federal and state courts have been confronted with a claim to assert general personal jurisdiction,[1] they consider certain factors in evaluating the claim. We have distilled the following relevant factors:

Whether the corporate defendant is

1. engaged in business in this state;
2. licensed to do business in this state;
3. owning, leasing, or controlling property (real or personal) or assets in this state;
4. maintaining employees, offices, agents, or bank accounts in this state;
5. present in that shareholders reside in this state;
6. maintaining phone or fax listings within this state;

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[1] See, e.g., Allred v. Moore & Peterson, 117 F.3d 278, 281-82 (5th Cir.1997), cert. denied, --- U.S. ----, 118 S.Ct. 691, 139 L.Ed.2d 637 (1998); Michigan Nat'l Bank v. Quality Dinette, Inc., 888 F.2d 462, 465 (6th Cir.1989); City of El Paso v. Carlos Salas-Porras Soule, 991 F.Supp. 812, 817-18 (W.D.Tex.1998); Zumbro, Inc. v. California Nat'l Prod., 861 F.Supp. 773, 776 (D.Minn.1994); Wims v. Beach Terrace Motor Inn, 759 F.Supp. 264, 269-70 (E.D.Pa.1991); Dean Mktg., Inc. v. AOC Int'l, Ltd., 610 F.Supp. 149, 152-53 (E.D.Mich.1985); Nelligan v. Johns-Manville Sales Corp., 530 F.Supp. 654, 656-57 (E.D.Mich.1982); National Indus. Sand Ass'n v. Honorable Jay Gibson, 897 S.W.2d 769, 772-73 (Tex.1995); Van Pelt v. Best Workover, Inc., 798 S.W.2d 14, 15-16 (Tex.Ct.App.1990).

7. advertising or soliciting business in this state;
8. traveling to this state by way of salespersons, etc.;
9. paying taxes in this state;
10. visiting potential customers in this state;
11. recruiting employees in the state;
12. generating a substantial percentage of its national sales through revenue generated from in-state customers.

In addition to these cases, Buddensick relies on several cases she asserts have found general personal jurisdiction based on promotional activities in a state. Although we need not rely on Stateline's promotional activities alone in concluding that the assertion of general personal jurisdiction is proper, these cases are helpful in demonstrating that, when a foreign corporation specifically targets citizens of another state, the corporation can reasonably be expected to have to defend itself in that forum. See Weintraub v. Walt Disney World, 825 F.Supp. 717, 720-21 (E.D.Pa.1993); Boone v. Sulphur Creek Resort, Inc., 749 F.Supp. 195, 199-200 (S.D.Ind.1990).

For the following reasons, we conclude that Stateline's activities are "substantial and continuous" such that Utah may assert general personal jurisdiction over Stateline. First, Stateline conducts extensive advertising and promotional activities in Utah, including a toll-free telephone number. Next, Stateline leases and possesses at least five parcels of real property

in Utah,[2] including property neighboring its casino for a parking lot and signage purposes. Further, Stateline contracts for goods and services with Utah corporations, including food, linens, advertisements, and professional services. Lastly, Stateline maintains two phone numbers, at least two post office boxes, and six fax numbers in Utah. Thus, it is not unreasonable for

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[2]Discovery revealed the following agreements:
(a) An August 1, 1996, lease covering "certain real property" in Tooele County, Utah between Stateline Properties, Inc. and Stateline Properties, Ltd. (Utah corporations) as lessors and Stateline Hotel, Inc. (the Nevada corporation and defendant in this case) as lessee;
(b) A lease and extension thereof covering a duplex property in Wendover, Utah between Stateline Properties (Utah corporation) as lessor and Stateline Hotel (Nevada corporation) as lessee for $800 per month;
(c) A lease and extension thereof covering two warehouse buildings in Wendover, Utah between Stateline Properties (Utah corporation) as lessor and Stateline Hotel (Nevada corporation) as lessee for $2,250 per month;
(d) A lease covering a parking structure in Wendover, Utah between Stateline Properties (Utah corporation) as lessor and Stateline Hotel (Nevada corporation) as lessee;
(e) A lease describing a "0.8" acre lot (Lot 1, Block 26, Wendover Plat "A") between Stateline Properties, Inc. (Utah corporation) as lessor and Stateline Hotel (Nevada corporation) as lessee for between $1200 to $2500 per month (used for parking lots, a parking structure, and signage); and
(f) A lease covering Building # 406 at Decker Field, Wendover, Utah between the City of Wendover, Utah as lessor and Stateline Hotel as lessee which Stateline lists as used for "storage space."

Stateline to be expected to be "hauled into court" in Utah. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291-99, 100 S.Ct. 559, 564-67, 62 L.Ed.2d 490 (1980).

CONCLUSION

We conclude that the sum of Stateline's activities in Utah are "substantial and continuous," such that Utah's courts may assert general personal jurisdiction over Stateline. We therefore reverse the trial court and remand for proceedings consistent with this decision.

s/Judth M.Billings
Judith M. Billings, Judge

I CONCUR:

s/Russell W. Bench
Russell W. Bench, Judge

I CONCUR IN THE RESULT:

s/Gregory K. Orme
Gregory K. Orme, Judge

IN THE SUPREME COURT OF THE STATE OF UTAH

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Chris Buddensick,

Plaintiff and Respondent.

vs. No. 990063-SC

Stateline Hotel, Inc.,
dba Stateline Hotel and Casino,

Defendant and Petitioner.

ORDER

This matter is before the Court upon a Petition for Writ of Certiorari, filed pursuant to Rule 48. of the Utah Rules of Appellate Procedure.

IT IS HEREBY ORDERED that the Petition for Writ of Certiorari filed on January 25, 1999, is denied.

FOR THE COURT:

April 13, 1999
Date

s/Richard C. Howe
Richard C. Howe
Chief Justice

Supreme Court, U.S.
FILED
SEP 8 1999
OFFICE OF THE CLERK

No. 99-99

IN THE

Supreme Court of the United States

STATE LINE HOTEL, INC.,

Petitioner,

v.

CHRIS BUDDENSICK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UTAH COURT OF APPEALS

RESPONDENT'S BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

A. Statement of Facts

While Respondent does not necessarily dispute the Statement of Facts offered by State Line Hotel, Chris Buddensick offers the following additional facts material to consideration of questions presented by the Petition for Certiorari.

1. Petitioner, the State Line Hotel, Inc., is a Nevada corporation which owns and operates the State Line Hotel in Wendover, Nevada. (Record at 11-12, 248, *Buddensick v. State Line Hotel, Inc.*, 972 P.2d at 928, 929 (Utah App. 1998)).

2. Wendover, Nevada, (State Line's principal place of business) is located on the Utah-Nevada border. It conducts extensive advertising and promotional activities in Utah, including maintenance of a toll-free telephone number. These advertising activities specifically target citizens of the State of Utah who comprise a significant source of its business. (*Buddensick*, 972 P.2d at 929 and 931.)

3. In addition to its advertising and promotional activities within the State of Utah, Petitioner contracts for goods and services (including legal work) within the Forum. (*Buddensick*, 972 P.2d at 929.)

4. Among the Utah entities with which Petitioner contracts is State Line Properties, Ltd., a Utah limited partnership which takes reservations from Utah residents for hotel rooms, golf packages, gaming tournaments, shows and entertainment. State Line Hotel, the Nevada corporation, is

the sole shareholder in State Line Properties, Inc., which is the general partner of State Line Properties, Ltd. Further, all but one of Petitioner's largest shareholders are Utah residents. (Record at 249.)

5. State Line Hotel, Inc., the Nevada corporation, State Line Properties, Ltd., the Utah limited partnership; and State Line Properties, Inc., the Utah corporation, are all named insureds under the same insurance policy. That policy was issued by St. Paul Fire Marine Insurance through Aird Insurance Agency, another Utah entity with whom Petitioner does business. (Record at 165 and 249.)

6. State Line Hotel, Inc. leases six parcels of real property in Utah, five of them from either State Line Properties, the Utah corporation or Utah limited partnership. Two of the parcels are used for purposes directly related to operation of the State Line Hotel and Casino (a parking lot and signage). The City of Wendover, Utah, leases a storage unit at its airport to Petitioner. These leases extend between five and twenty years and are several extensions of prior leases. (Record at 106 and 165 and 249.)

7. State Line Hotel, the Nevada corporation, is a party to other actions presently pending in the State of Utah. (Record at 162.)

8. On July 29, 1996, Respondent, Chris Buddensick, sustained severe personal injuries, when proceeding through a buffet line at its restaurant, she slipped on a substance on the floor and fell. (*Buddensick*, 972 P.2d at 928.)

SUMMARY OF ARGUMENT

I.

Petitioner has engaged in continuous and systematic general business contacts within the State of Utah sufficient for its courts to exercise general jurisdiction over this party. Advertising activities directed at Utah residents; contracting with Utah residents for goods and services; and, the leasing of real property within the State which is directly related to its hotel and casino operations are more significant and pervasive than those found adequate in United States Supreme Court controlling authority. State Line Hotel's Petition for Writ of Certiorari should be rejected.

II.

This Court has enunciated a cogent and time-tested set of criteria and standards upon which lower courts may decide general jurisdiction issues. To the extent there is any doubt or need for the United States Supreme Court to further limit or expand a State's right to exercise jurisdiction over a non-resident, the facts here are not so compelling to warrant consideration. The quantity and quality of State Line Hotel's business contacts within the State of Utah are overwhelming and do not present circumstances justifying Supreme Court review.

REASONS FOR DENYING THE WRIT

I.

THE UTAH COURT OF APPEALS DECISION IN *BUDDENSICK v. STATE LINE HOTEL* IS IN HARMONY WITH OPINIONS OF THIS COURT.

State Line's Petition for Certiorari contends the Utah Court of Appeals violated the Due Process Clause of the Fourteenth Amendment of the United States Constitution by finding the Utah courts had general jurisdiction over the subject Nevada corporation. More specifically, Petitioner contends the *Buddensick v. State Line* ruling was in conflict with controlling United States Supreme Court authority, citing: *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1983); and *Perkins v. Benquet Consolidated Mining Co.*, 342 U.S. 437, 72 S. Ct. 413, 96 L. Ed. 485 (1952). In so arguing, it is as if State Line ignores the significant and compelling facts and circumstances surrounding its close ties with the forum state. State Line's contacts with Utah far exceed those upon which this Court upheld a finding of general jurisdiction in the *Perkins* case. This should result in rejection of the Petition for Certiorari.[1]

When a party's cause of action does not arise directly out of or relate to a foreign corporation's activities in the forum state, to satisfy Due Process, it must be shown there are sufficient minimum contacts between the forum and the foreign

1. Neither Petitioner's Brief nor the Utah Court of Appeals decision addresses arguments made by Ms. Buddensick that the Utah Courts also had specific jurisdiction over the Nevada corporation. Ms. Buddensick's Court of Appeals Brief raises this issue, asserting her slip-and-fall cause of action rose directly from State Line's activities in Utah, more particularly its extensive advertising and promotional campaigns.

corporation. As expressed by this Court in *Perkins*, the question is whether State Line's business activities in Utah were "continuous and systematic". (*Perkins*, 342 U.S. at 438, 445.)[2]

In assessing whether State Line's business activities within the forum state are sufficiently continuous and systematic, it is important to here note the physical presence of the Petitioner. *See, generally, Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985). As outlined by the Utah Court of Appeals in its opinion, State Line possesses no less than five parcels of real property in Utah, two of which are directly adjacent to State Line's hotel and casino and are integral if not necessary for its gambling operations. Its physical presence in the forum state is also reflected by two post office boxes in Utah, a cellular phone line, regular phone line and six Utah fax numbers. *Buddensick*, 972 P.2d 929.

Equally important is the close incestuous business relationships between the State Line, the Nevada corporation, and its Utah "cousins", State Line Properties, Ltd. and State Line Properties, Inc. Petitioner acknowledges a commonality of shareholders, officers and/or directors. These entities appear on the same letterhead and stationery and in one instance a post office box. While the presence of subsidiary corporations in the forum state is not by itself sufficient to warrant the exercise of general jurisdiction, it is indicative of a continuous and systematic business presence of the non-resident. *See, generally, Southmark Corp. v. Life Investors*, 851 F.2d 763 (5th Cir. 1988) and cases cited at 774.[3]

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2. The Utah Courts apply an almost identical standard, asking whether State Line's contacts with the forum were "substantial and continuous". *Buddensick*, 972 P.2d 930.

3. Without challenging State Line's motives for incorporating in Nevada to operate its hotel and casino, such is arguably a result

(Cont'd)

Even Petitioner's Articles of Incorporation filed with the State of Nevada in 1961 bear evidence of its long standing ties and business dealings with Utah entities. The Articles were notarized and signed in Wendover, Utah. Amendments to the Articles were filed at the request of and presumably prepared by the Utah law firm of Van Cott, Bagley, Cornwall and McCarthy headquartered in Salt Lake City. Notably, many of the real property leases referenced above were also prepared by this Utah law office, which reflects just one Utah entity from whom the Nevada corporation obtains professional services and good and supplies. Additional examples are: linen supply services; business equipment leases and/or repairs; and, the use of a Utah insurance agency for procurement of the policy which covers the slip-and-fall accident giving rise to Ms. Buddensick's complaint. (Record at 107.)

To say State Line's level of significant business activities within the forum state not meet or exceed those of the foreign corporation in *Perkins* (found sufficient by this Court to support an exercise of general jurisdiction) is disingenuous. In *Perkins*, the foreign Defendant maintained an office in Ohio and carried on correspondence, banking and securities activities from the forum state. But not only does State Line engage in similar activities, this Nevada corporation went further by the leasing of several properties in Utah, which is also the domicile of several related entities and many of its shareholders, directors and officers. Petitioner's advertising and promotional activities specifically directed at Utah residents should also not go unnoticed by this Court as it

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(Cont'd)
of Nevada's gaming laws and regulations. NEV. GAMING COMM. REG. 15.490.1(b)-1 announces Nevada policy not to ordinarily grant a gaming license to a non-resident corporation.

shows continuous and systematic business activities by the foreign corporation.

The Utah Court of Appeals made a reasoned, thorough assessment of State Line's business contacts within the State of Utah and determined they were systematic and continuous such as to satisfy constitutional Due Process concerns. At page 930 of its opinion, the Court surveyed federal and state case law and distilled twelve relevant factors in determining whether a corporate defendant should be subjected to the forum state's jurisdiction. Of those "relevant factors", State Line: engages in business in Utah; owns, leases or controls property or assets in the State; maintains employees, offices, agents or bank accounts in the State; has shareholders which reside in Utah; maintains phone and fax listings; advertises and solicits business in the State; and, generates a substantial portion of its sales or revenue from Utah customers.

These activities not only support a finding of continuous and systematic business dealings in the forum, they also make it fair and reasonable for Petitioner to be hailed before its courts.

> The concept of minimum contacts, in turn, can be seen to perform two related, but distinguishable functions. It protects the defendant against the burdens of litigating in a distant or inconvenient forum . . . The protection against inconvenient litigation is typically described in terms of "reasonableness" or "fairness". We have said that the Defendant's contacts with the forum state must be such that maintenance of the suit "does not offend traditional motions of fair play and substantial justice". (Citations omitted). The

> relationship between the defendant and the forum must be such that it is "reasonable . . . to require the corporation to defend the particular suit which is brought there". (Citation omitted).

Worldwide Volkswagen Corp. v. Woodson, 444 U.S. 291-292, 100 S. Ct. 559, 62 L. Ed. 490 (1979). Given the level of contacts with Utah, including utilization of a Salt Lake City law firm as counsel, State Line should not be heard to allege any inconvenience from litigating within the forum state. Wendover, Nevada, where the casino is located, is but a two hour drive from Salt Lake City where the case is pending. Eye-witnesses and Ms. Buddensick's treating physicians are all residents of the State of Utah and should their depositions be required, it is a far more convenient forum than Elko County, where Wendover, Nevada is situated. And, the hotel and casino's location on the border of Utah in Nevada makes it reasonably foreseeable it will be hailed before the Utah courts and be required to defend a suit there. *Burger King*, 471 U.S. 462, 476.[4] Indeed, Petitioner in its responses to discovery acknowledged being a defendant in a number of Utah court proceedings.

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4. It is here worth noting that both *Perkins* and *Helicopteros* involved truly "foreign" corporations, that is, non-U.S. companies. Geographical proximity is not necessarily a factor expressly utilized by the Courts in resolving a general jurisdiction case or in assessing Due Process concerns. However, this Court has, on at least one occasion, commented that Due Process concerns are heightened when international defendants are involved. In *Asahi Metal Industry v. Superior Court*, 480 U.S. 102, 114, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987), the Court noted "additional burdens" placed upon one who must defend itself in a foreign legal systems. Those burdens are not present and do not raise Due Process issues when, as here, the Defendant maintains its principal place of business on the forum's border.

Balancing the absence of inconvenience to State Line to defend Ms. Buddensick's claim in Utah with her interest in obtaining convenient and effective relief and Utah's interest in adjudicating this dispute on behalf of its citizen, it is clear the Utah Court of Appeals did not offend traditional notions of due process in its ruling. By evaluating the substantive merits of the Petition, this Court should find ample grounds to uphold the Utah Court of Appeals decision in *Buddensick v. State Line Hotel, Inc.* It need not proceed with the more thorny question of whether there are reasons to rethink the Court's prior rulings on general jurisdiction in the context of the present case.

II.

THE BUDDENSICK OPINION DOES NOT DECIDE AN IMPORTANT FEDERAL QUESTION WHICH HAS NOT BUT SHOULD BE DECIDED BY THIS COURT.

Point II of State Line's Petition asks the Court to revisit and indeed alter the "continuous and systematic" criteria which has governed evaluation of general jurisdiction cases for the forty-seven years since issuing the *Perkins*' opinion. In so doing, State Line does not challenge the fundamental reasonableness or vitality of the "continuous and systemic" standard but instead asks the Court to "provide guidelines as to the types of activities which would meet this constitutional requirement." (Petitioner's Brief at page 14.) It further claims such guidelines are necessary because State Line's activities within the forum state fall somewhere between those present in *Perkins* and *Helicopterios*. But this premise is flawed as discussed above. Here, State Line's business dealings in Utah actually exceed those found sufficient in *Perkins* to support an exercise of general

jurisdiction. The Utah Court of Appeals correctly found in its opinion that State Line met numerous "relevant factors" applied by Courts from other jurisdictions. The "inconsistent results" Petitioner and the quoted commentators rely on to support review of this case, simply are not present in the face of the overwhelming evidence Chris Buddensick produced.

State Line contends the recent Arizona case of *Williams v. Lakeview Co.*, 1999 WL 440398 (Arizona Court App. 1999) illustrates the "conflict and confusion regarding the scope of general jurisdiction". In truth, it offers no basis for granting the Petition. Had the Arizona Appellate Court been faced with all the compelling facts uncovered by Ms. Buddensick during discovery here, it would have reached the same result as the Utah Court.[5]

Defendant's sole contacts with the forum state in *Williams* were its advertising in Arizona newspapers and solicitation of its residents to the Lakeview casino, who did comprise a substantial number of its customers. The Court specifically noted that Lakeview's owners/partners were all Nevada residents and that it owned no real or personal property in Arizona, significant contacts present with respect to State Line and Utah. It is not mere conjecture to state that the Arizona Court of Appeals would have found general jurisdiction appropriate had such key elements been present.

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5. In the end, the Arizona Court in *Williams* did reach the same result, albeit on the basis of specific jurisdiction rather than general jurisdiction. It ultimately found "Plaintiff's injuries can fairly be said to arise out of or result from allegedly tortious activities that *Lakeview* intentionally directed towards the forum." *Williams*, 1999 West Law 440390-440400, citing *Calder v. Jones*, 465 U.S. 783, 789-90, 104 S. Ct. 1482, 79 L. Ed. 2d 804 (1984).

Not only was the Court of Appeals decision in *Buddensick* consistent with the *Williams* case (relied upon by State Line), it comports with recent United States Court of Appeals' decision. For instance, in *Wilson v. Humphrey's (Cayman) Ltd.*, 916 F.2d 1239 (7th Cir. 1990), the Appellate Court found constitutional Due Process concerns were not offended when the district court exercised personal jurisdiction over a foreign corporation in a suit involving a personal injury/assault which occurred while Plaintiff was staying as a guest at a Cayman Islands' hotel. Defendants only contacts there were a contract with a local/forum tour operator, ads in magazines distributed in the state and occasionally sending corporate officers or agents to Indiana. The Appellate Court remanded for further proceedings the question of whether general jurisdiction was appropriate but nonetheless found the exercise of specific jurisdiction warranted notwithstanding defendant's the due process arguments. Importantly, this Court refused to review the Seventh Circuit opinion and denied the Petition for Certiorari.

Another recent Court of Appeals ruling rejecting a due process defense to the exercise of personal jurisdiction is *Rainbow Travel Service v. Hilton Hotels Corp.*, 896 App. 1233 (10th Cir. 1990). Similar to the *Wilson* case and our facts, plaintiffs relied upon defendant's solicitation of business within the forum to support is jurisdictional claims. While the Court noted that a physical presence of the Defendant would be helpful in such circumstances, it nonetheless found an exercise of specific jurisdiction appropriate. The Court expressly rejected Defendant's claims that its contacts within the forum state were "random or fortuitous" when it intentionally sought out and conducted business with residents of the forum. *See Worldwide Volkswagen*, 444 U.S. 286.

Rule 10 of the Rules of the United States Supreme Court provides "a Petition for a Writ of Certiorari will be granted only for *compelling reasons*." (Emphasis added.) The overwhelming evidence offered by Ms. Buddensick of State Line's "continuous and systematic" business contacts within the forum state actually give compelling reasons to reject the Petition. Appellate court after appellate court have upheld the exercise of specific or general jurisdiction with far fewer contacts than are here present. Uniformly, the guidelines set forth by the Supreme Court in *Perkins* and *Heliocopteros* have allowed lower courts to fairly and reasonably articulate their grounds for either permitting or declining an exercise of general jurisdiction. Even if the Supreme Court was inclined to change its standards or offer further guidelines as to what is or is not sufficient, this is not the appropriate case to do so.

CONCLUSION

Based on the foregoing, Respondent Chris Buddensick respectfully urges the Court to deny State Line Hotel's request for a Writ of Certiorari.

Respectfully submitted,

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